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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 266

[Docket No FR-5881-P-01]

RIN 2502-AJ35

**Section 542(c) Housing Finance Agencies Risk-Sharing Program:
Revisions to Regulations**

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Proposed rule.

SUMMARY: Through the Section 542(c) HFA Risk-Sharing program, HUD enters into risk-sharing agreements with State and local housing finance agencies (HFAs) so that HFAs can provide more insurance and credit for multifamily loans. This proposed rule would amend existing regulations for the program so that they better align with policies for other HUD programs, reflect current industry and HUD practices, and conform to statutory amendments. Additionally, this proposed rule would provide HUD with greater flexibility in operating the Section 542(c) HFA Risk-Sharing program over time, and would provide more flexibility for certain HFAs accepting a greater share of the risk of loss on mortgages insured under the program. This proposed rule would also update references and terminology that are now outdated and clarify certain provisions.

DATES: Comment Due Date: **[Insert date 30 days from the date of publication in the Federal Register]**.

ADDRESSES: Interested persons are invited to submit comments regarding this notice to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW, Room 10276, Washington, DC 20410-0500. Communications must refer to the above docket number and title. There are two methods for submitting public comments. All

submissions must refer to the above docket number and title.

1. Submission of Comments by Mail. Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW, Room 10276, Washington, DC 20410-0500.

2. Electronic Submission of Comments. Interested persons may submit comments electronically through the Federal eRulemaking Portal at www.regulations.gov. HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the www.regulations.gov website can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

Note: To receive consideration as public comments, comments must be submitted through one of the two methods specified above. Again, all submissions must refer to the docket number and title of this document.

No Facsimile Comments. Facsimile (FAX) comments are not acceptable.

Public Inspection of Public Comments. All properly submitted comments and communications submitted to HUD will be available for public inspection and copying between 8 a.m. and 5 p.m., weekdays, at the above address. Due to security measures at the HUD Headquarters building, an appointment to review the public comments must be scheduled in advance by calling the Regulations Division at 202-708-3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Relay Service at 800-877-8339. Copies of all comments submitted are available for

inspection and downloading at www.regulations.gov.

FOR FURTHER INFORMATION CONTACT: Diana Talios, Office of Multifamily Production, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW, Room 6156, Washington, DC, 20410; telephone number (202)-402-7125 (this is not a toll-free number). Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at 800-877-8339.

SUPPLEMENTARY INFORMATION:

I. Background

Section 542 of the Housing and Community Development Act of 1992 (12 U.S.C. 1707 1715z-22) (Section 542) directs HUD to carry out programs through the Federal Housing Administration (FHA) to demonstrate the effectiveness of providing new forms of Federal credit enhancement for multifamily loans. Originally enacted as a pilot program, the Section 542(c) HFA Risk-Sharing program was made a permanent multifamily insurance program by section 235 of title II of Public Law 106-377¹, HUD's Fiscal Year 2001 appropriations act (FY 2001 HUD Appropriations Act).

The purpose of the Section 542(c) HFA Risk-Sharing program is to provide credit enhancement for mortgages of multifamily housing projects whose loans are underwritten, processed, serviced, and disposed of by HFAs. HUD and HFAs share in the risk of the mortgage, which enables HFAs to provide more insurance and credit for multifamily loans. Under the program, qualified State and local HFAs may originate and underwrite affordable housing loans including new construction, substantial rehabilitation, refinancing, and housing for the elderly. HFAs may elect to share from 10 to 90 percent of the loss on a loan with HUD. In the event of a claim, the HFA reimburses HUD pursuant to terms of the risk-sharing agreement.

¹ Approved October 27, 2000.

HUD's regulations governing the Section 542(c) HFA Risk-Sharing program are set out in 24 CFR part 266. Part 266 was last updated in the year 2000 and is now outdated in certain respects.

II. This Proposed Rule

HUD proposes to revise 24 CFR part 266 in order to update the regulations, to better align them with current HUD policies and industry practices, and to provide HUD and certain HFAs with flexibility to operate the Section 542(c) HFA Risk-Sharing program more efficiently.

A. Conforming Amendments

This proposed rule would revise sections of part 266 to conform to Section 542(c), as it was amended by the FY 2001 HUD Appropriations Act. Specifically, this proposed rule would amend part 266 to remove references to the program being a pilot.

Additionally, this proposed rule would amend the definition of affordable housing in § 266.5 so that it more closely conforms to the statutory language of Section 542. Specifically, this proposed rule would amend the definition of “affordable housing” for the Section 542 HFA Risk-Sharing program to mean a project that meets the requirements for a qualified low-income housing project under section 42(g) of the Internal Revenue Code (26 U.S.C title 26) (IRC).

Currently, § 266.5 specifies that affordable housing means a project in which 20 percent or more of the units are both rent-restricted and occupied by families whose income is 50 percent or less of the area median income as determined by HUD, with adjustments for household size, or in which 40 percent² or more of the units are both rent-restricted and occupied by families whose income is 60 percent or less of the area median income as determined by HUD, with adjustments for household size. The existing definition also says that a residential unit is rent-restricted if the gross

² Twenty five percent in New York City as a result of section 142(d)(6) of the IRC establishing a special rule for projects located in a specified high cost housing area.

rent with respect to such unit does not exceed 30 percent of the imputed income limitation applicable to such unit.

The regulatory language unnecessarily repeats what is already provided in statute. Section 542(c)(7) states that housing securing loans insured under the section qualifies as affordable only if the housing is occupied by very low-income families and bears rents not greater than the gross rent for rent-restricted residential units as determined under section 42(g)(2) of the IRC. Section 42(g) of the IRC provides qualifications for low-income housing projects to be eligible for a low-income housing tax credit. While the definition in Section 542 cross references only to IRC subsection 42(g)(2), the rent limits established in subsection (g)(2) can be understood only through a reading of IRC subsection (g) in its entirety as a result of internal cross references in the IRC statutory language. Because “gross rent” and “supportive service” are both defined in section 42(g) of the IRC, this proposed rule would remove the definitions of these two terms from § 266.5, but would include in the definition of “affordable housing” the provision currently in the “gross rent” definition that a utility allowance includes charges for the occupancy of a cooperative unit. The proposed regulatory change will remove unnecessary regulatory verbiage and simplify the part 266 regulations.

Further, § 266.210(b) of the existing regulations is outdated in that it provides that compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) (NEPA) is the responsibility of the HUD Field Office or other responsible entity. However, Section 542(c)(9) of the Housing and Community Development Act of 1992, as amended by the Multifamily Housing Property Disposition Reform Act of 1994 (Pub. L. 103–233), provides that HUD may provide for assumption of its environmental review requirements. This proposed regulation thus moves the paragraph on NEPA compliance requirements from § 266.210, HUD-

retained review functions, to a new section, § 266.217, titled “Environmental review requirements.” This proposed rule would also change the phrasing of the existing environmental review requirements to make it clear that Responsible Entities assume legal responsibility for environmental compliance, but HUD may make a finding in accordance with 24 CFR 58.11 (Legal capacity and performance) and may perform the environmental review itself under 24 CFR part 50 (Protection and enhancement of environmental quality). Relatedly, this proposed rule would revise § 266.300(b) and § 266.305(b), which describe HFA responsibilities, to reflect that the HFA has a responsibility to arrange for the environmental review.

This proposed rule would also amend certain sections of the regulations to conform to other HUD regulations. The proposed rule would revise § 266.215(e) to reflect that HFAs must follow Lead-Based Paint requirements in 24 CFR part 35, and it would also update § 266.220(b) to reflect HUD’s equal access rule, which requires that HUD-assisted and HUD-insured housing be made available without regard to actual or perceived sexual orientation, gender identity, or marital status (See 77 FR 5662, February 3, 2012). Currently, § 266.220(b) states that the mortgagor must certify that it will not discriminate against any family because of the sex of the head of household. This proposed rule would update the section to state that the mortgagor must certify that it will provide housing without regard to sexual orientation, gender identity, or marital status, and will refrain from making improper inquiries, in accordance with 24 CFR 5.105(a)(2).

B. Updating Terminology

This proposed rule would update part 266 to eliminate references to outdated terminology. Specifically, §§ 266.100(a)(1), 266.110(a), and 266.120(d)(5) refer to HFAs that have or maintain a top tier designation. However, rating agencies no longer offer top tier ratings. Rather, current rating agency practice is to provide an issuer credit rating that evaluates the agency’s capacity and

willingness to meet its financial commitments. The proposed rule would replace requirements for HFAs to have top tier designation with requirements that they have an issuer rating of “A” or better. Additionally, § 266.505(b)(10) refers to the General Accounting Office, and this proposed rule would change this to reflect the current name of the agency: the Government Accountability Office.

C. Revisions to Provide Greater Flexibility

HUD proposes changing certain requirements to provide both HUD and HFAs that assume a larger share of the risk with greater flexibility in operating the Section 542(c) HFA Risk-Sharing program.

Under § 266.100(b), HFAs with Level II approval, that is, HFAs that assume less than 50% of the risk of loss on mortgages insured under the Section 542(c) HFA Risk-Sharing program, must use underwriting standards and loan terms and conditions approved by HUD. However, the regulations do not provide that HUD can revisit the approval if market conditions or risk standards change. Many of the standards used by HFAs with Level II approval have been in place for more than 20 years. This proposed rule would amend § 266.100(b) to provide that, every five years, HUD will recertify the underwriting standards, loan terms and conditions, and asset management and servicing procedures for HFAs with Level II approval, and may require changes to these procedures as a condition for continued approval. HUD’s review would periodically benchmark Level II HFA underwriting standards against current FHA standards that are analogous to the appropriate FHA program. Additionally, § 266.305(a), which describes underwriting standards for HFAs accepting less than 50% of the risk, would refer to the revised § 266.100(b).

Similarly, this proposed rule would amend § 266.125(a), which describes actions that HUD may take against HFAs that do not comply with Section 542(c) HFA Risk-Sharing program requirements, to provide that one of the actions that HUD may take is to require the HFA to revise

any or all of its underwriting, processing, or asset management policies as directed by the FHA Commissioner.

This proposed rule would provide HFAs that assume at least 50% of the risk of loss on mortgages insured under the Section 542(c) HFA Risk-Sharing program more flexibility in financing existing properties without substantial rehabilitation to preserve affordability by amending § 266.200(c). Currently, § 266.200(c) provides that HFAs may finance existing properties without substantial rehabilitation if the financing will result in the preservation of affordable housing, project occupancy is not less than 93 percent, the mortgage does not exceed an amount supportable by the lower of the units rents being collected under the rental assistance agreement or at similar unassisted projects in the market area, and the HUD-insured mortgage does not exceed the sum of the existing indebtedness, cost of refinancing, cost of repairs, and reasonable transaction costs. Additionally, HFAs that assume less than 50 percent of the risk may not refinance loans that had been in default within the 12 months prior to the application for refinancing. The proposed rule maintains these requirements, but eliminates the requirement that the HUD-insured mortgage may not exceed the sum of the existing indebtedness, cost of refinancing, cost of repairs, and reasonable transaction costs for HFAs that assume 50 percent or more of the risk. Permitting equity take-outs under certain conditions for refinance and acquisition transactions is a key preservation tool to ensure long-term affordability. This provision is also consistent with similar FHA programs, and industry practice.

In order to mitigate risk to FHA, ensure affordability of projects, and consistent with FHA's experience, this proposed rule would add additional requirements that all HFAs would have to meet in order to finance existing properties: loans to be refinanced cannot have been in default in the 12 months prior to the date of application for refinancing, the owner must agree to renew the housing

assistance payments (HAP) contract for a 20-year term, if applicable, existing and post-refinance HAP residual receipts must be set aside to be used to reduce future HAP payments, the property must be maintained as affordable housing for a period of at least 20 years, regardless of whether the loan is prepaid, and a capital needs assessment must be performed and funds escrowed for all necessary repairs and replacement reserves funded for future capital repairs.

Additionally, this proposed rule would provide HFAs that assume at least 50% of the risk of loss on Section 542(c) mortgages more flexibility by providing that certain loans need not be regularly amortizing. Section 266.410(e) would be revised so that loans of HFAs that assume at least 50% of the risk would not need to be regularly amortizing if they have a minimum term of 17 years and HUD has approved the HFA's underwriting standards, loan terms and conditions, and asset management and servicing procedures. Non-fully amortizing (also known as "balloon") loans are not unusual multifamily lending options. The change will align the 542(c) program with conventional industry practices, particularly for Low Income Housing Tax Credits (LIHTC) transactions. Moreover, balloon loans with similar terms are typical in HUD's section 542(b) Risk Share program, under which HUD enters into reinsurance agreements with Fannie Mae, Freddie Mac, the Federal Housing Finance Board, and other Qualified Financial Institutions (QFIs).

Further, this proposed rule would revise § 266.620, which explains circumstances under which the contract of insurance would terminate. This proposed rule adds flexibility by providing that, in cases where an HFA or its successors commits fraud or makes a material misrepresentation, HUD may permit HFAs that assume more than 50% of the risk and have an issuer rating of "A" or better to indemnify HUD, or otherwise reimburse HUD in a manner acceptable to the Commissioner, for the full amount of the mortgage claim in lieu of the mortgage insurance contract being terminated. This change would provide flexibility for HFAs that assume more than 50% of

the risk to participate in certain financing initiatives offered by HUD under the Section 542(c) HFA Risk-Sharing program, while protecting the FHA General and Special Risk Insurance Fund against losses.

D. Revisions to Reflect Current Program Practices

In addition to amending § 266.410(e) to provide more flexibility for certain HFAs, this proposed rule would clarify that the existing requirement that the mortgage must be fully amortizing does not apply to construction loans. Construction loans have typically been non-amortizing, interest-only loans since the inception of the program, and this is typical industry practice.

This proposed rule would also better reflect current program practices by removing § 266.10, entitled “Allocations of assistance and credit subsidy.” Section 266.10 currently provides that HUD will announce the availability of assistance under the Section 542(c) HFA Risk-Sharing program and invite qualified HFAs to submit an application. It also provides that credit subsidies will be obligated and allocated in accordance with outstanding HUD instructions. This section was relevant when the Section 542(c) HFA Risk-Sharing program was a pilot program with specific unit counts reserved for each participating HFA. Unit allocations and reservations of credit subsidy are no longer required because the program is a permanent insurance program.

Relatedly, this proposed rule would amend § 266.105(b), which says that applications from HFAs for approval to participate in the Section 542(c) HFA Risk-Sharing program will be submitted in response to a notice published in the Federal Register. In accordance with current practice, which reflects that the Section 542(c) HFA Risk-Sharing program is now permanent, this section would now state that applications may be submitted at any time, in the form and manner established by HUD.

This proposed rule would clarify that in certain circumstances, Housing for Older Persons

projects, as described in 24 CFR part 100 subpart E, qualify as eligible projects under § 266.200.

Housing providers should be aware that projects must comply with all program rules and the housing for older persons exemption to the Fair Housing Act (42 U.S.C. 3607(b); 24 CFR part 100 subpart E) in order to exclude families with children under 18. A housing facility insured under the Section 542 program may not invoke the housing for older persons exemption to exclude children if it also receives Federal financial assistance pursuant to a statute or program in which eligible families include children under the age of 18. For example, owners of projects that receive rental assistance under any of the Section 8 rental assistance programs are bound by the definition of "families" and "elderly families" in section 3(b)(3)(B) of the United States Housing Act of 1937 and in implementing regulations. Because these definitions explicitly include families with children, such projects are not eligible for the exemption. The housing for older persons exemption allows a housing community to exclude children under 18 years without violating the Fair Housing Act's prohibition against familial status discrimination. The Fair Housing Act prohibits, *inter alia*, familial status discrimination, which means one or more individuals who have not attained the age of 18 years being domiciled with (1) a parent or another person having legal custody of such individual or individuals or (2) the designee of such parent or other person having such custody, with the written permission of such parent or other person. The protections against familial status discrimination apply also to persons who are pregnant or who are in the process of securing legal custody of any individual who is not yet 18 years old. See 42 U.S.C. 3602(k).

The housing for older persons exemption may be invoked if the housing is either provided under a State or Federal program that the Secretary of HUD determines is specifically designed and operated to assist elderly persons, or, intended for and solely occupied by, persons who are 62 years old or older, or, intended and operated for persons who are 55 years of age or

older where at least 80 percent of the occupied units are occupied by at least one person who is at least 55 years old, the housing facility publishes and adheres to policies and procedures that demonstrate the intent to serve persons 55 years old and older, and, the housing facility complies with HUD's rules for verification of occupancy. See 42 U.S.C. 3607(b) and 24 CFR 100.300 through 100.307.

In order to qualify for the housing for older persons exemption, State or Federal programs must be determined by the Secretary to be "specifically designed and operated to assist elderly persons (as defined in the State or Federal program)." See 42 U.S.C. 3607(b)(2)(A); 24 CFR 100.302. HUD, however, has never designated one of its own programs as housing for older persons under this exemption.

Relatedly, the rulemaking proposes to add a clause to the description of elderly projects, at § 266.200, specifying that an elderly family includes families with minor children. This is to distinguish such projects from those that qualify for and claim an exemption from the Fair Housing Act's prohibition against familial status discrimination at 42 U.S.C. 3607(b)(2).

Another change this proposed rule would make is to § 266.420(b)(4), which currently requires that, in periodic advances cases, HFAs provide a certification that periodic advances were made proportionate to construction progress as part of their closing dockets. However, § 266.310, entitled, "Insurance of advances or insurance upon completion; applicability of requirements," does not require periodic advances to be made proportionate to construction progress. This proposed rule therefore revises § 266.420(b)(4) to remove the requirement that periodic advances be proportionate to construction progress, and instead requires that, as part of their closing documents, in periodic advances cases HFAs provide certification that the advances were made in accordance with the mortgage pursuant to § 266.310.

This proposed rule would also revise § 266.650, Items deducted from total loss, to clarify that where a full claim follows a partial payment of claim by HUD, that partial payment of claim is considered an amount received by the HFA that will be deducted from the total loss to be shared by HUD and the HFA. The existing regulatory language does not explicitly provide this.

Another change this proposed rule would make to reflect current program practices is to clarify that where HUD may direct or review an HFA's underwriting standards and loan terms and conditions, it may also direct or review that HFA's asset management and servicing procedures. Thus, this proposed rule adds references to "asset management and servicing procedures" throughout, and adds a new paragraph to § 266.500 that explains that asset management and servicing procedures of any HFA electing to take less than 50 percent of the risk on certain projects are subject to review, modification, and approval by HUD.

This proposed rule also makes changes for accuracy, such as deleting the parenthetical in § 266.100(b)(1) that suggests that Level I approval is where an HFA assumes a percentage of the risk of loss in "(increments of 10 percent)," because the risk percentages are not limited to 10 percent increments.

E. Aligning Section 542(c) with Other FHA Programs

Section 266.200(d) currently provides that projects receiving Section 8 rental subsidies or other rental subsidies may be insured only if the mortgage does not exceed an amount supportable by the lower of contract rents under the rental assistance agreement or market rents. However, under HUD's Supportive Housing program, authorized under section 202 of the Housing Act of 1959 (12 U.S.C. 1701q), a project may be insured if the loan is underwritten to contract rents, regardless of market rents. This proposed rule would amend § 266.200(d) so that Supportive Housing program projects of HFAs assuming at least 50 percent of the risk of loss on mortgages

insured under the Section 542(c) HFA Risk-Sharing program would be subject to the same underwriting standard as other Section 202 projects in that the loans may be underwritten to contract rents. A similar change is incorporated in new § 266.200(c)(7) for existing projects without substantial rehabilitation. These changes will better align requirements between HUD programs, thereby streamlining and facilitating program administration by HFAs, as well as HUD oversight.

FHA currently requires a National Loan Committee to approve all large loans under the Multifamily Accelerated Processing (MAP) Guide as a means of managing risk. Loans of HFAs that assume less than 50 percent of the risk of loss pose a similar risk to FHA as do MAP loans. Therefore, this proposed rule would amend § 266.305(a), establishing the underwriting standards for HFAs accepting less than 50 percent of the risk, to add a provision that large loans also require prior approval by the FHA Commissioner. What constitutes a large loan will be determined using the same process currently used by HUD for establishing large loan amounts in other FHA programs.

This proposed rule would revise § 266.200(b)(2), the explanation of substantial rehabilitation projects eligible for the Section 542(c) HFA Risk-Sharing program, so that substantial rehabilitation would occur when the scope of work to improve an existing project exceeds in aggregate cost a sum equal to the base per dwelling unit limit times the applicable high cost factor established by the Commissioner, or when the scope of work involves the replacement of two or more building systems. 'Replacement' is when the cost of replacement work exceeds 50% of the cost of replacing the entire system. The base per dwelling unit limit is \$15,000 per unit for 2015, and will be adjusted annually based on the percentage change in the consumer price index. The rationale for the revision is twofold: the current definition of substantial rehabilitation as work that exceeds 15% of the project's value results in a disproportionate impact to projects in high cost

areas, particularly for preservation efforts that involve moderate rehabilitation; and the proposed change makes the program standard comparable to other similar FHA multifamily insurance programs that are required to impose prevailing wage requirements.

Additionally, this proposed rule would revise §§ 266.600, 266.602, and 266.604, which currently refer to specific prescribed percentages for calculating an HFA's mortgage insurance premium (MIP). These set percentages are no longer appropriate now that the Section 542(c) HFA Risk-Sharing program is no longer a pilot. This proposed rule would revise the regulations to permit MIP changes for the HFA Risk-Sharing program to be published through Federal Register notice, with an opportunity for public comment, as is the case for other FHA programs.

F. Editorial Changes

Finally, this proposed rule makes a number of minor editorial changes to improve readability and clarity, and to ensure consistency and accuracy within the rule. For example, this proposed rule, throughout, adds and updates reference citations, standardizes the case of the term "contract of insurance," replaces the term "HUD Field Office" with "local HUD office," deletes the term "his or her" where it is unnecessary, specifies that references to days are measured in calendar days, and replaces a reference to the "Office of General Counsel" with simply "HUD." HUD also has revised § 266.225(a)(1)(i) to clarify HUD's intent that Davis-Bacon wage requirements apply only where advances that are for construction of the project are insured under Part 266. This intent is reflected in § 266.225(d)(2) of the current regulation, which requires that no advance for a project subject to Davis-Bacon requirements shall be insured unless a certificate is filed with the application for the advance certifying that the laborers and mechanics employed in the construction of the project have been paid the Davis-Bacon prevailing wages. HUD has also revised § 266.225(c) to clarify that HUD has responsibility for enforcing Davis-Bacon labor standards under this section,

and has revised § 266.630(d)(2) to clarify that partial claim payments are limited to the amount specified. HUD has made similar editorial changes of this nature.

III. Justification for Reduced Comment Period

For proposed rules issued for public comment, it is HUD's policy to afford the public “not less than sixty days for submission of comments” (24 CFR 10.1). In cases in which HUD determines that a shorter public comment period may be appropriate, it is also HUD's policy to provide an explanation of why the public comment period has been abbreviated. For the following reasons, HUD believes that a reduced 30-day comment period is justified for this proposed rulemaking.

This proposed rule updates regulations for the Section 542(c) HFA Risk-Sharing program to reflect statutory changes and to revise outdated references. These regulatory changes are technical and non-substantive. The proposed rule also better aligns HUD’s regulations with current industry and current HUD practices and policies, and provides greater flexibility to HUD in operating the program and to certain HFA’s. In general, these amendments alleviate the administrative burdens imposed on program participants.

Further, these policy changes have already been discussed with, and are supported by stakeholders. From 2011-2013, HUD discussed proposed changes to the Risk-Sharing program with the National Council of State Housing Agencies (NCSHA) and a working group of HFAs. In October, 2014, HUD circulated a summary matrix of proposed changes to the program to NCSHA and HFAs and requested input on the proposals. Comments from NCSHA and HFAs have been overwhelmingly supportive of almost all of the revisions in the proposed rule.

Although HUD believes that an abbreviated comment period is appropriate, HUD welcomes public input and is soliciting comments for a period of 30-days. All comments will be considered in the development of the final rule.

IV. Findings and Certifications.

Regulatory Review—Executive Orders 12866 and 13563

Under Executive Order 12866 (Regulatory Planning and Review), a determination must be made whether a regulatory action is significant and therefore, subject to review by the Office of Management and Budget (OMB) in accordance with the requirements of the order. Executive Order 13563 (Improving Regulations and Regulatory Review) directs executive agencies to analyze regulations that are “outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned.”

This proposed rule updates HUD’s regulations pertaining to Housing Finance Agency Risk Sharing Program for Insured Affordable Multifamily Project Loans, codified in 24 CFR part 266. The program regulations were initially promulgated in 1994, with the last updates undertaken in 2000, but only to a few regulatory sections. This update is undertaken to reflect statutory changes and revise outdated references and terminology. The proposed rule also better aligns HUD’s regulations with current industry and current HUD practices and policies. These changes would not create additional significant burdens for the public. As a result, this rule was determined to not be a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and therefore was not reviewed by the Office of Management and Budget.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 et seq.), generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment

rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

The majority of the proposed regulatory amendments would update the regulations governing HUD's HFA Risk-Sharing program to conform to current industry practices and FHA policies with which HFAs and other program participants are already familiar. Other proposed regulatory changes will provide greater flexibility for HFAs, alleviating administrative burden and related costs of operating the program. While there may be some costs for HFAs to update their practices and procedures to reflect some of the regulatory changes, these costs are minimal in comparison to the streamlining benefits provided by the revised program regulations.

For the reasons presented, the undersigned certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Executive Order 13132, Federalism

Executive Order 13132 (entitled "Federalism") prohibits an agency from publishing any rule that has Federalism implications if the rule either imposes substantial direct compliance costs on state and local governments and is not required by statute, or the rule preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive order. This proposed rule would not have Federalism implications and would not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive order.

Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The Finding of No Significant

Impact is available for public inspection during regular business hours in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW, Room 10276, Washington, DC 20410-0500. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the Finding by calling the Regulations Division at (202) 402-3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Relay Service at (800) 877-8339.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4; approved March 22, 1995) (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments, and on the private sector. This proposed rule does not impose any Federal mandates on any state, local, or tribal government, or on the private sector, within the meaning of the UMRA.

Information Collection Requirements

The information collection requirements contained in this proposed rule have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and assigned OMB control number 2502-0500. In accordance with the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless the collection displays a currently valid OMB control number.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance (CFDA) Program number for the Housing Finance Agencies Section 542(c) Risk Sharing Program is 14.188.

List of Subjects in 24 CFR Part 266

Intergovernmental relations, Low and moderate income housing, Mortgage insurance, Reporting and recordkeeping requirements.

Accordingly, for the reasons stated above, HUD proposes to amend 24 CFR part 266 as follows:

PART 266 -- HOUSING FINANCE AGENCY RISK-SHARING PROGRAM FOR INSURED AFFORDABLE MULTIFAMILY PROJECT LOANS

1. The authority citation for 24 CFR part 266 is revised to read as follows:

Authority: 12 U.S.C. 1715z-22.; 42 U.S.C. 3535(d).

2. Amend part 266 by removing the words “Contract of Insurance” and add in their place the words “contract of insurance” wherever they occur.

3. Revise § 266.1 to read as follows:

§ 266.1 Purpose and scope.

(a) Authority and scope. (1) Section 542 of the Housing and Community Development Act of 1992 (12 U.S.C. 1715z-22), directs the Secretary of the Department of Housing and Urban Development (HUD), acting through the Federal Housing Administration (FHA), to carry out programs that will provide new forms of Federal credit enhancement for multifamily loans. Section 542, entitled, “Multifamily Mortgage Credit Programs,” provides insurance authority independent from that provided by the National Housing Act.

(2) Section 542(c) of the Housing and Community Development Act of 1992 specifically directs HUD to carry out a program of risk-sharing with qualified State and local housing finance

agencies (HFAs). The qualified HFAs are authorized to underwrite and process loans. HUD provides full mortgage insurance on affordable multifamily housing projects processed by such HFAs under this program. Through risk-sharing agreements with HUD, HFAs contract to reimburse HUD for a portion of the loss from any defaults that occur while HUD insurance is in force.

(3) The extent to which HUD directs qualified HFAs regarding their underwriting standards, loan terms and conditions, and asset management and servicing procedures is related to the proportion of the risk taken by an HFA.

(b) Purpose. The primary purpose of this program is to provide credit enhancement for multifamily loans, *i.e.*, utilization of full insurance by HUD, pursuant to risk-sharing agreements with qualified housing finance agencies, for the development of affordable housing. The utilization of Federal credit enhancements increases access to capital markets and, thereby, increases the supply of affordable multifamily housing. By permitting HFAs to underwrite, process, and service loans and to manage and dispose of properties that fall into default, affordable housing is made available to eligible families and individuals in a timely manner.

4. Amend § 266.5 as follows:

- a. Remove “, as amended” from the definition of “Act”;
- b. Revise the definition of “Affordable housing”;
- c. Remove from the definition of “Commissioner” the words “his or her” and add in their place the words “the Commissioner’s”;
- d. Revise the definition of “Credit subsidy”;
- e. Remove from the definition of “Designated offices” the words “HUD Field Offices” and add in their place the words “local HUD offices”;

- f. Remove the definition of “Gross rent”;
- g. Remove from the definition of “Multifamily housing” the word “Secretary” and add in its place the word “Commissioner”; and
- h. Remove the definition of “Supportive services”.

The revisions read as follows:

§ 266.5 Definitions.

* * * * *

Affordable housing means a project that meets the requirements for a qualified low-income housing project under section 42(g) of the Internal Revenue Code of 1986 (26 U.S.C. 42(g)). For purposes of this part, the reference to a utility allowance in 26 U.S.C. 42(g) includes charges for the occupancy of a cooperative unit.

* * * * *

Credit subsidy means the cost of a direct loan or loan guarantee under the Federal Credit Reform Act of 1990 (subtitle B of title XIII of the Omnibus Budget Reconciliation Act of 1990, Public Law 101-508, approved Nov. 5, 1990).

* * * * *

§ 266.10 [Removed]

- 5. Remove § 266.10.

- 6. Revise § 266.30 to read as follows:

§ 266.30 Nonapplicability of 24 CFR part 246.

The regulations at 24 CFR part 246, pertaining to local rent control, do not apply to projects that are security for mortgages insured under this part.

7. In § 266.100 :

- a. Revise the first sentence of paragraph (a);
- b. Revise paragraphs (a)(1), (a)(6)(i), and (b)(1);
- c. Revise the introductory text of paragraph (b)(2);
- d. Revise paragraph (b)(3); and
- e. Add paragraph (b)(4).

The revisions and additions read as follows:

§ 266.100 Qualified housing finance agency (HFA).

(a) Qualifications. To participate in the program, an HFA must apply and be specifically approved for the program described in this part, in addition to being approved as a mortgagee under § 202.10 of this part. * * *

(1) Carry an issuer credit rating of “A” or better, or an equivalent as evaluated by Standard and Poor's or any other nationally recognized rating agency; or

* * * *

(6) * * *

(i) The Department of Justice has not brought a civil rights suit against the HFA, and no suit is pending;

* * * *

(b) * * *

(1) Level I approval to originate, service, and dispose of multifamily mortgages where the HFA uses its own underwriting standards, loan terms and conditions, and asset management and servicing procedures, and assumes 50 to 90 percent of the risk of loss (in 10 percent increments).

(2) Level II approval to originate, service, and dispose of multifamily mortgages where the HFA uses underwriting standards, loan terms and conditions, and asset management and servicing procedures approved by HUD, and:

* * * * *

(3) For HFAs who plan to use Level I and Level II processing, the underwriting standards, loan terms and conditions, and asset management and servicing procedures to be used on Level II loans must be approved by HUD.

(4) Every five years, HUD will review the underwriting standards, loan terms and conditions, and asset management and servicing procedures for HFAs with Level II approval. HUD may require changes to these procedures as a condition for continued Level II approval.

8. Revise § 266.105(b) to read as follows:

§ 266.105 Application requirements.

* * * * *

(b) Applications for participation in program. Applications from HFAs for approval to participate in the program under this part may be submitted at any time, and must be submitted in the form and manner established by HUD.

9. In § 266.110, revise the paragraph heading and the first sentence of paragraph (a) and the third sentence of paragraph (b)(1) to read as follows:

§ 266.110 Reserve requirements.

(a) HFAs with an issuer credit rating of “A” or better or overall rating of “A” on general obligation bonds. An HFA with an issuer credit rating of “A” or better, or an equivalent

designation, or an HFA with an overall rating of “A” on its general obligation bonds, is not required to have additional reserves so long as the HFA maintains that designation or rating, unless the Commissioner determines that a prescribed level of reserves is necessary. * * *

* * * *

(b) * *

(1) * * * The account must be established prior to the execution of any risk-sharing agreement under this part in an initial amount of not less than \$500,000. * * *

* * * *

§ 266.115 [Amended]

10. Amend § 266.115 to remove the words “his or her” from the first sentence in paragraph (a) and from paragraph (c).

11. In § 266.120, revise paragraphs (d) and (e)(5) to read as follows:

§ 266.120 Actions for which sanctions may be imposed.

* * * *

(d) Actions or conduct for which sanctions may be imposed against the HFA by HUD's Mortgagee Review Board under 24 CFR 25.9, which pertains to “notice of administrative action”.

(e) * *

(5) Maintain an issuer credit rating of “A” or better, or an equivalent designation, or overall rating of “A” on general obligation bonds (or if such rating is lost, comply with paragraph (e)(6) of this section);

* * * *

12. In § 266.125, revise paragraph (a)(6), add paragraph (a)(8), and revise the first sentence of paragraph (d)(1) to read as follows:

§ 266.125 Scope and nature of sanctions.

(a) * * *

(6) Recommend to the Commissioner that the HFA's mortgagee approval be withdrawn pursuant to 24 CFR part 25 (regulations of the Mortgage Review Board) and/or that penalties be imposed pursuant to 24 CFR part 30 (regulations pertaining to Civil Money Penalties; Certain Prohibited Contact);

* * * *

(8) Require the HFA to revise any or all of its underwriting, processing, asset management, or servicing policies and procedures as directed by the Commissioner.

* * * *

(d) * * *

_____ (1) Any sanction imposed by a designated office in writing will be immediately effective, will state the grounds for the action, and provide for the HFA's right to an informal hearing before the designated office representative or designee in the designated office. * * *

* * * *

13. In § 266.200:

- a. Revise paragraphs (b)(2), (c), (d), (e), and (g);
- b. Redesignate paragraph (h) as paragraph (i); and
- c. Add new paragraph (h).

The revisions and additions read as follows:

§ 266.200 Eligible projects.

* * * *

(b) * * *

(2) Substantial rehabilitation occurs when the scope of work to improve an existing project exceeds in aggregate cost a sum equal to the base per dwelling unit limit times the applicable high cost factor established by the Commissioner, or when the scope of work involves the replacement of two or more building systems. *Replacement* is when the cost of replacement work exceeds 50% of the cost of replacing the entire system. The base per dwelling unit limit is \$15,000 for 2015, and will be adjusted annually based on the percentage change in the consumer price index.

(c) Existing projects. Financing of existing properties for acquisition or refinancing without substantial rehabilitation is allowed.

(1) If the financing will result in the preservation of affordable housing, where the property will be maintained as affordable housing for a period of at least 20 years, regardless of whether the loan is prepaid; and

(2) Project occupancy is not less than 93 percent (to include consideration of rent in arrears), based on the average occupancy in the project over the most recent 12 months; and

(3) The loan to be refinanced has not been in default within the 12 months prior to the date of the application for refinancing; and

(4) If applicable, the owner of the property agrees to renew the Housing Assistance Payments (HAP) contract for a 20-year term; and

(5) Existing and post-refinance HAP residual receipts are set aside to be used to reduce future HAP payments; and

(6) A capital needs assessment must be performed and funds escrowed for all necessary repairs and replacement reserves funded for future capital repairs; and

(7) The HUD-insured mortgage does not exceed an amount supportable by the lower of the unit rents being collected under the rental assistance agreement or the unit rents being collected at unassisted projects in the market area that are similar in amenities and location to the project for which insurance is being requested, although this paragraph does not apply to Level I participants if those projects are financed under section 202 of the Housing Act of 1959 (12 U.S.C. 1701q); and

(8) For Level II participants only, the HUD-insured mortgage may not exceed the sum of the existing indebtedness, cost of refinancing, or acquisition, the cost of repairs and reasonable transaction costs as determined by the Commissioner. This paragraph does not apply to Level I participants.

(d) Projects receiving section 8 rental subsidies or other rental subsidies. Projects receiving project-based housing assistance payments under section 8 of the U.S. Housing Act of 1937 (42 U.S.C.1437f) or other rental subsidies and meeting the requirements of this part may be insured under this part only if the mortgage does not exceed an amount supportable by the lower of the unit rents being or to be collected under the rental assistance agreement or the unit rents being collected at unassisted projects in the market that are similar in amenities and location to the project for which insurance is being requested. This paragraph does not apply to projects of Level I participants if those projects are financed under section 202 of the Housing Act of 1959 (12 U.S.C. 1701q).

(e) SRO projects. Single room occupancy (SRO) projects, as defined in § 266.5, are eligible for insurance under this part. Units in SRO projects must be subject to 30-calendar day or longer leases; however, rent payments may be made on a weekly basis in SRO projects.

* * * * *

(g) Elderly projects. Projects or parts of projects specifically designed for the use and occupancy by elderly families. An elderly family means any household where the head or spouse is 62 years of age or older, including children under 18, and also any single person who is 62 years of age or older.

(h) Housing for older persons. Projects eligible for and in compliance with 42 U.S.C. 3607(b) and 24 CFR part 100, subpart E.

* * * * *

§ 266.205 [Amended]

14. Amend § 266.205 by adding the word “calendar” after the number “30” in paragraph (a)(1) and adding the letters “U.S.” before the term “Department of Defense” in paragraph (b)(2).

15. In § 266.210:

- a. Remove paragraph (b);
- b. Redesignate paragraphs (c), (d) and (e) as paragraphs (b), (c) and (d), respectively; and
- c. Revise newly redesignated paragraphs (c) and (d) to read as follows:

§ 266.210 HUD-retained review functions.

* * * * *

(c) Subsidy layering. The Commissioner, or Housing Credit Agencies as defined by section 42 of the Internal Revenue Code of 1986 (26 U.S.C. 42), through such delegation as may be in effect by regulation hereafter, shall review all projects receiving tax credits and some form of HUD assistance for any excess subsidy provided to individual projects and reduce subsidy sources in accordance with outstanding guidelines.

(d) Davis-Bacon Act. The Commissioner shall obtain and provide to the HFA the appropriate U.S. Department of Labor wage rate determinations under the Davis-Bacon Act, where they apply under this part.

16. Revise § 266.215(e) to read as follows:

§ 266.215 Functions delegated by HUD to HFAs.

* * * * *

(e) Lead-based paint. The HFA will perform functions related to Lead-based paint requirements as set forth in 24 CFR part 35, subparts A, B, G, and R.

17. Add § 266.217 to read as follows:

§ 266.217 Environmental review requirements.

The responsible entity, as defined in 24 CFR part 58 (Environmental Review Procedures for Entities Assuming HUD Environmental Responsibilities), assumes legal responsibility for compliance with the requirements of the National Environmental Policy Act of 1969 and related laws and authorities. The responsible entity will visit each project site proposed for insurance under this part and prepare the applicable environmental reviews as set forth in 24 CFR part 58. HUD may make a finding in accordance with 24 CFR 58.11 and may perform the environmental review itself under 24 CFR part 50 (Protection and Enhancement of Environmental Quality). In all cases the environmental review must be completed before HUD may issue the firm approval letter.

18. Revise § 266.220 to read as follows:

§ 266.220 Nondiscrimination in housing and employment.

The mortgagor must certify to the HFA that, so long as the mortgage is insured under this part, the mortgagor will:

(a) Not use tenant selection procedures that discriminate against families with children, except in the case of a project qualifying for and complying with the requirements of the “housing for older persons” exemption, as defined in section 807(b)(2) of the Fair Housing Act (42 U.S.C. 3607(b)) and further described in 24 CFR part 100, subpart E. Projects receiving Federal financial assistance in which elderly families include minor children may not avail themselves of the housing for older persons exemption;

(b) Determine eligibility for admission and continued occupancy without regard to actual or perceived sexual orientation, gender identity, or marital status and refrain from inquiries about sexual orientation and gender identity in accordance with 24 CFR 5.105(a)(2);

(c)(1) Comply with:

(i) The Fair Housing Act (42 U.S.C. 3601 through 3619), as implemented by 24 CFR part 100;

(ii) Titles II and III of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 through 12213), as implemented by 28 CFR part 35;

(iii) Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u), as implemented by 24 CFR part 135;

(iv) The Equal Credit Opportunity Act (15 U.S.C. 1691-1691f), as implemented by 12 CFR part 202;

(v) Executive Order 11063, as amended by Executive Order 12259 (3 CFR 1958-1963 Comp., p. 652 and 3 CFR 1980 Comp., p. 307), and implemented by 24 CFR part 107;

(vi) Executive Order 11246 (3 CFR 1964-1965 Comp., p. 339), as implemented by 41 CFR

part 60; and

(vii) Other applicable Federal laws and regulations issued pursuant to these authorities; and applicable State and local fair housing and equal opportunity laws.

(2) In addition to the authorities listed in paragraph (c)(1) of this section, a mortgagor that receives Federal financial assistance must also certify to the HFA that, so long as the mortgage is insured under this part, it will comply with:

(i) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d), as implemented by 24 CFR part 1;

(ii) The Age Discrimination Act of 1975 (42 U.S.C. 6101 through 6107), as implemented by 24 CFR part 146; and

(iii) Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), as implemented by 24 CFR part 8.

19. In § 266.225, revise the introductory text of paragraph (a)(1), and revise paragraphs (a)(1)(i), (b), (c), (d)(1), and the second sentence of paragraph (e) to read as follows:

§ 266.225 Labor standards.

(a) * * *

(1) All laborers and mechanics employed by contractors or subcontractors on a project insured under this part shall be paid not less than the wages prevailing in the locality in which the work was performed for the corresponding classes of laborers and mechanics employed in construction of a similar character, as determined by the Secretary of the U.S. Department of Labor (Secretary of Labor) in accordance with the Davis-Bacon Act, as amended (40 U.S.C. 3141 et seq.), where the project meets all of the following conditions:

(i) Advances for construction of the project are insured under this part;

* * * *

(b) Volunteers. The provisions of this section shall not apply to volunteers under the conditions set out in 24 CFR part 70 (Use of Volunteers on Projects Subject to Davis-Bacon and HUD-Determined Wage Rates). In applying 24 CFR part 70, insurance under this part shall be treated as a program for which there is a statutory exemption for volunteers.

(c) Labor standards. Any contract, subcontract, or building loan agreement executed for a project subject to Davis-Bacon wage rates under paragraph (a) of this section shall comply with all labor standards and provisions of the U.S. Department of Labor regulations in 29 CFR parts 1, 3, and 5 that would be applicable to a mortgage insurance program to which Davis-Bacon wage rates are made applicable by statute, provided, that regulatory provisions relating to investigations and enforcement by the U.S. Department of Labor shall not be applicable, and enforcement of Davis-Bacon labor standards shall be the responsibility of the Commissioner in accordance with paragraph (e) of this section.

(d) * * *

(1) No advance under a mortgage on a project subject to Davis-Bacon wage rates under paragraph (a) of this section shall be eligible for insurance under this part unless the HFA determines (in accordance with the Commissioner's administrative procedures) that the general contractor or any subcontractor or any firm, corporation, partnership or association in which the contractor or subcontractor has a substantial interest was not, on the date the contract or subcontract was executed, on the ineligible list established by the Comptroller General of the United States, pursuant 29 CFR 5.12, issued by the Secretary of Labor.

* * * *

(e) * * *Where routine administration and enforcement functions are delegated to the HFA, the HFA shall bear financial responsibility for any deficiency in payment of prevailing wages or, where applicable under 29 CFR part 1 (Procedures for Predetermination of Wage Rates), any increase in compensation to a contractor, that is attributable to any failure properly to carry out its delegated functions. * * *

20. In § 266.300:

- a. Revise paragraph (b)(1);
- b. Redesignate existing paragraphs (b)(3), (b)(4), and (b)(5) as paragraphs (b)(4), (b)(5), and (b)(6), respectively;
- c. Add new paragraph (b)(3);
- d. Revise newly redesignated paragraph (b)(5); and
- e. Revise paragraph (c).

The revisions and additions read as follows:

§ 266.300 HFAs accepting 50 percent or more of risk.

* * * * *

(b) * * *

(1) Determine that a market for the project exists, taking into consideration any comments from the local HUD office relative to the potential adverse impact the project will have on existing or proposed Federally insured and assisted projects in the area.

* * * * *

(3) Arrange for the performance of an environmental review in accordance with § 266.217;

* * * * *

(5) Approve the Affirmative Fair Housing Marketing Plan, required by § 266.215(a); and

* * * *

(c) HUD-retained reviews. After positive completion of the HUD-retained reviews specified in § 266.210(a) and (b) the local HUD office will issue a firm approval letter.

* * * *

21. In § 266.305:

a. Revise paragraphs (a) and (b)(1);

b. Redesignate existing paragraphs (b)(3), (b)(4), and (b)(5) as paragraphs (b)(4), (b)(5), and (b)(6), respectively;

c. Add new paragraph (b)(3);

d. Revise newly redesignated paragraph (b)(5), and

e. Revise paragraph (c).

The revisions and additions read as follows:

§ 266.305 HFAs accepting less than 50 percent of risk.

(a) Underwriting standards. The underwriting standards and loan terms and conditions of any HFA electing to take less than 50 percent of the risk on certain projects are subject to review, modification, and approval by HUD in accordance with § 266.100(b). These HFAs may assume 25 percent or 10 percent of the risk depending upon the loan-to-replacement-cost or loan-to-value ratios of the projects to be insured as specified in § 266.100(b)(2)(i) and (ii). Large loans, as defined by HUD for its insured multifamily mortgage programs, require prior approval by the Commissioner.

(b) * * *

(1) Determine that a market for the project exists, taking into consideration any comments from the local HUD office relative to the potential adverse impact the project will have on existing or proposed Federally insured and assisted projects in the area;

* * * * *

(3) Arrange for the performance of an environmental review in accordance with § 266.217;

* * * * *

(5) Approve the Affirmative Fair Housing Marketing Plan, required by § 266.215(a); and

* * * * *

(c) HUD-retained reviews. After positive completion of the HUD-retained reviews specified in § 266.210(a) and (b), the local HUD office will issue a firm approval letter.

* * * * *

22. In § 266.410, revise paragraph (e) to read as follows:

§ 266.410 Mortgage provisions.

* * * * *

(e) Amortization. The mortgage must provide for complete amortization (*i.e.*, be regularly amortizing) over the term of the mortgage. The complete amortization requirement does not apply to:

(1) Construction loans, or

(2) Level I participants where the loan has a minimum term of 17 years and the HFA's underwriting standards, loan terms and conditions, and asset management and servicing procedures have been approved by HUD.

* * * * *

23. In § 266.420, revise the second sentence of paragraph (a) and paragraphs (b)(3), (4), and (7), and add paragraph (b)(13) to read as follows:

§ 266.420 Closing and endorsement by the Commissioner.

(a) * * * The note must provide that the mortgage is insured under section 542(c) of the Housing and Community Development Act of 1992 and the regulations set forth in this part that are in effect on the date of endorsement. * * *

* * * * *

(b) * * *

(3) Certification that the loan has been processed, prudently underwritten (including a determination that a market exists for the project), cost certified (if the project is being submitted for final endorsement) and closed in full compliance with the HFA's standards and requirements (or where the mortgage is insured under Level II, in full compliance with the underwriting standards, loan terms and conditions, and asset management and servicing procedures, as approved by HUD).

(4) At the time of final endorsement, for periodic advances cases, a certification that the advances were made in accordance with the mortgage pursuant to § 266.310.

* * * * *

(7) A certification that the HFA has reviewed and approved the Affirmative Fair Housing Marketing Plan, required by § 266.215(a), and found it acceptable.

* * * * *

(13) Certification that housing claiming the housing for older persons exemption is eligible for and complies with 42 U.S.C. 3607(b) and 24 CFR part 100, subpart E.

24. Revise § 266.500 to read as follows:

§ 266.500 General.

(a) HFA responsibility for monitoring project owners. The HFA will have full responsibility for managing and servicing projects insured under this part (in accordance with procedures disclosed and submitted with its application and the requirements of this part). The HFA is responsible for monitoring and determining the compliance of the project owner in accordance with the provisions of this subpart. HUD will monitor the performance of the HFA, not the project owner, to determine its compliance with the provisions covered under this subpart.

(b) HUD review of procedures for HFAs with Level II approval. Asset management and servicing procedures of any HFA electing to take less than 50 percent of the risk on certain projects are subject to review, modification, and approval by HUD in accordance with § 266.100(b).

§266.505 [Amended]

25. Amend § 266.505:

- a. In paragraph (b)(8), after the word “Plan” by adding the phrase “, required by § 266.215(a),”;
- b. In paragraph (b)(10), by removing the words “General Accounting” and adding in their place “U.S. Government Accountability”.

26. Revise § 266.507 to read as follows:

§ 266.507 Maintenance requirements.

The mortgagor must maintain the project in accordance with the physical condition standards in 24 CFR part 5, subpart G (Physical Condition Standards and Inspection Requirements).

27. Revise § 266.510(a) to read as follows:

§ 266.510 HFA responsibilities.

(a) Inspections. The HFA must perform inspections in accordance with the physical inspection procedures in 24 CFR part 5, subpart G (Physical Condition Standards and Inspection Requirements).

* * * * *

28. Revise § 266.600 to read as follows:

§ 266.600 Mortgage insurance premium: insurance upon completion.

(a) Initial premium. For projects insured upon completion, on the date of the final closing, the HFA shall pay to the Commissioner an initial premium in an amount established by the Commissioner under § 266.604.

(b) Premium payable with first payment of principal. On the date of the first payment of principal the HFA shall pay a second premium (calculated on a per annum basis) in an amount established by the Commissioner under § 266.604.

(c) Subsequent premiums. Until one of the conditions is met under § 266.606(a), the HFA on each anniversary of the date of the first principal payment shall pay to the Commissioner an annual mortgage insurance premium in an amount established by the Commissioner under § 266.604, without taking into account delinquent payments, or partial claim payment under § 266.630, or prepayments, for the year following the date on which the premium becomes payable.

29. In § 266.602, revise paragraph (a), the first sentence of paragraph (b), the first sentence of paragraph (c), and paragraph (d) to read as follows:

§ 266.602 Mortgage insurance premium: Insured advances.

(a) Initial premium. For projects involving insured advances, on the date of the initial closing, the HFA shall pay to the Commissioner an initial premium equal to an amount established by the Commissioner under § 266.604.

(b) Interim premium. On each anniversary of the initial closing, the HFA shall pay an interim mortgage insurance premium in an amount established by the Commissioner under § 266.604. * * *

(c) Premium payable with first payment of principal. On the date of the first principal payment, the HFA shall pay a mortgage insurance premium in an amount established by the Commissioner under § 266.604. * * *

(d) Subsequent premiums. Until one of the conditions is met under § 266.606(a), the HFA on each anniversary of the date of the first principal payment shall pay to the Commissioner an annual mortgage insurance premium in an amount established by the Commissioner under § 266.604, without taking into account delinquent payments, prepayments, or a partial claim payment under § 266.630, for the year following the date on which the premium becomes payable.

30. In § 266.604, revise paragraphs (a) and (b), the first sentence of paragraph (c), and the second and third sentences of paragraph (d) to read as follows:

§ 266.604 Mortgage insurance premium: Other requirements.

(a) Premium calculations on or after first principal payment. The premiums payable to the Commissioner on and after the first principal payment shall be calculated in accordance with the

amortization schedule prepared by the HFA for final closing and an amount established by the Commissioner through a notice published in the Federal Register and providing a 30-day comment period. After the comments have been considered, HUD will publish a final notice announcing the premium and its effective date. The premium shall not take into account delinquent payments or prepayments.

(b) Future premium changes. Notice of future premium changes will be published in the Federal Register. The Commissioner will propose mortgage insurance premium changes for the Risk-Sharing Program and provide a 30-calendar day public comment period for the purpose of accepting comments on whether the proposed changes are appropriate. After the comments have been considered, HUD will publish a final notice announcing the premium and its effective date.

(c) Closing information. The HFA shall provide final closing information to the Commissioner within 15 calendar days of the final closing in a format prescribed by the Commissioner. * * *

(d) Due date for premium payments. * * * Any premium received by the Commissioner more than 15 calendar days after the due date shall be assessed a late charge of 4 percent of the amount of the premium payment due. Mortgage insurance premiums that are paid to the Commissioner more than 30 calendar days after the due date shall begin to accrue interest at the rate prescribed by the Treasury Fiscal Requirements Manual.

31. In § 266.620:

- a. Revise the section heading;
- b. Redesignate the undesignated introductory paragraph as paragraph (a) and redesignate existing paragraphs (a) through (g), as paragraphs (a)(1) through (7), respectively; and

c. Add a new paragraph (b).

The revision and addition read as follows:

§ 266.620 Termination of contract of insurance and indemnification.

* * * * *

(b) In lieu of termination of the mortgage insurance contract pursuant to paragraph (a)(5) of this section, the Commissioner may, in his or her full discretion, permit a Level I participant rated “A” or higher to indemnify HUD, or otherwise reimburse HUD in a manner acceptable to the Commissioner, for the full amount of the mortgage claim.

32. In § 266.626, revise the first sentence of paragraph (c) and revise paragraph (d) to read as follows:

§ 266.626 Notice and date of termination by the Commissioner.

* * * * *

(c) Notice of default. If a default (as defined in paragraph (a) of this section) continues for a period of 30 calendar days, the HFA must notify the Commissioner within 10 calendar days thereafter, unless the default is cured within the 30-day period. * * *

(d) Timing of claim filing. Unless a written extension is granted by HUD, the HFA must file an application for initial claim payment (or, if appropriate, for partial claim payment) within 75 calendar days from the date of default and may do so as early as the first day of the month following the month for which a payment was missed. Upon request of the HFA, HUD may extend, up to 180 calendar days from the date of default, the deadline for filing a claim. In those cases where the HFA certifies that the project owner is in the process of transacting a bond refunder, refinancing the mortgage, or changing the ownership for the purpose of curing the default and bringing the

mortgage current, HUD may extend the deadline for filing a claim beyond 180 calendar days, not to exceed 360 calendar days from the date of default.

33. Revise § 266.628(a)(3) to read as follows:

§ 266.628 Initial claim payments.

(a) * * *

(3) The HFA must use the proceeds of the initial claim payment to retire any bonds or any other financing mechanisms securing the mortgage within 30 calendar days of the initial claim payment. Any excess funds resulting from such retirement or repayment shall be returned to HUD within 30 calendar days of the retirement.

* * * * *

34. In § 266.630, revise the second sentence of paragraph (c)(2), paragraphs (d)(1), (2), and (4), and the second sentence of paragraph (d)(5) to read as follows:

§ 266.630 Partial payment of claims.

* * * * *

(c) * * *

(2) * * * The HFA is granted an extension of 30 calendar days from the date of any notification for further action.

(d) Requirements—(1) One partial claim payment. Only one partial claim payment may be made under a contract of insurance.

(2) Partial claim payment amount. The amount of the partial claim payment is limited to 50% of the amount of relief provided by the HFA in the form of a reduction in principal and a

reduction of delinquent interest due on the insured mortgage times the lesser of HUD's percentage of the risk of loss or 50 percent.

* * * * *

(4) Partial claim repayment by HFA. The HFA must remit to HUD a percentage of all amounts collected on the HFA's second mortgage within 15 calendar days of receipt by the HFA. The applicable percentage is equal to the percentage used in paragraph (d)(2) of this section to determine the partial claim payment amount. Payments made after the 15th day must include a 5 percent late charge plus accrued interest at the Debenture rate.

(5) * * * The HFA must submit a final certified statement within 30 calendar days after the second mortgage is paid in full, foreclosed, or otherwise terminated.

§ 266.634 [Amended]

35. Amend § 266.634(c) by adding the word “calendar” immediately before the word “days” in the first sentence.

§ 266.638 [Amended]

36. Amend § 266.638 to:

- b. Add the word “calendar” immediately before the word “days” in the first sentence of paragraph (a);
- c. Remove the word “five” from the second sentence of paragraph (b), and add in its place the number “5”;
- d. Remove the words “five year” from the third sentence of paragraph (b) and add in their place “5-year”.

§ 266.642 [Amended]

37. Amend the third sentence of § 266.642 to remove the phrase “45-day” and in its place add the phrase “45-calendar day”.

§ 266.644 [Amended]

38. Amend § 266.644 to add the word “calendar” before the word “days” in the undesignated introductory paragraph

§ 266.648 [Amended]

39. Amend § 266.648(c)(4) to remove the words “the Office of General Counsel” and add in their place “HUD”.

40. In § 266.650, revise paragraph (a) to read as follows:

§ 266.650 Items deducted from total loss.

* * * * *

(a) All amounts received by the HFA on account of the mortgage after the date of default, including any partial payment of claim paid by HUD in the event a full claim follows a partial payment of claim;

* * * * *

§ 266.654 [Amended]

41. Amend § 266.654(b) to add the word “calendar” before the word “days” in the first sentence.

Date: February 25, 2016

Edward Golding
Principal Deputy Assistant Secretary for Housing

[FR-5881-P-01]

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